

1 David M. Crosby, Esq.  
2 Nevada Bar #3499  
3 CROSBY & ASSOCIATES  
4 711 South Eighth Street  
5 Las Vegas, Nevada 89101  
6 Phone: (702) 382-2600

7 Attorneys for Debtor(s)

8  
9 UNITED STATES BANKRUPTCY COURT  
10 DISTRICT OF NEVADA  
11 \* \* \* \* \*

12 In the matter of: } Case No: BK-09-25412-BAM  
13 Oscar Arnoldo Orellana and } Chapter 13  
14 Elvira Orellana, }  
15 Debtors. }  
16 Date: 2-18-10  
17 Time: 2:30 p.m.  
18 Rick A. Yarnall

19 **AMENDED MOTION TO VALUE DEBTORS' NON-PRINCIPAL RESIDENCE REAL**  
20 **PROPERTY, AVOID WHOLLY UNSECURED LIEN(S) ENCUMBERING SAME,**  
21 **AND TO MODIFY THE RIGHTS OF PARTIALLY SECURED LIENHOLDER(S)**  
22 **AND OBJECTION TO LIENHOLDERS' PROOFS OF CLAIM, IF ANY**

23 Come Now Debtors, Oscar Arnoldo Orellana and Elvira Orellana, by and through  
24 their legal counsel, David M. Crosby, Esq., of the law firm Crosby & Associates, who  
25 respectfully move this Court to value Debtors' non-principal residence, determine the  
junior lien of CitiMortgage, Inc to be wholly unsecured and the first lien to be partially  
unsecured, to avoid said wholly unsecured liens and to modify the rights of said creditors  
accordingly including determining the claims pursuant to any proof(s) of claim which  
such lienholders may have filed to be unsecured where there is insufficient equity in the  
residence to secure more than the first lien.

This Motion is brought pursuant to 11 U.S.C. §502(a), §506(a), §1322(b)(2), and  
Bankruptcy Rules 3012 and 9014, the Points and Authorities set forth below and all  
documents and pleadings on file herein.

1 Dated this ~~10~~<sup>11</sup> day of January, 2010.

2 CROSBY & ASSOCIATES

3 By:

4 David M. Crosby, Esq.  
5 Attorney For Debtors

6

7

8 **POINTS AND AUTHORITIES**

9

10 **I.**

11 **STATEMENT OF FACTS**

12 1. Debtors filed a Chapter 13 petition in United States Bankruptcy Court,  
13 District of Nevada on August 21, 2009.

14 2. On the date of the petition, Debtors were the owners of real property used  
15 as rental property known and described as 2735 San Vincente Street, Las Vegas, NV  
16 89115 (Exhibit "1") legally described as follows:

17 Lot Twenty (20) in Block Five (5) of Holiday Park No. 10, as  
18 shown by map thereof on file in Book 15 of Plats, Page 52  
19 in the Office of the County Recorder of Clark County,  
Nevada.

20 APN: 140-18-310-010

21 3. The value of said real property at the time Debtor's Chapter 13 Petition  
22 was filed was \$41,605.00 as set forth more particularly in an internet appraisal of subject  
23 property (Exhibit "2").

24 4. Said property at the time of filing was subject to the following lien  
25 allegedly evidenced by Promissory Notes and Deeds of Trust:

**First Mortgage:** (Exhibit "3")  
America's Servicing, Co \$ 167,997.54  
P.O.Box 10328  
Des Moines, IA 50306  
Loan # xxxxxx8696

Second Mortgage: (Exhibit "4")  
CitiMortgage, Inc. \$ 41,451.95  
P.O. Box 6006  
The Lakes, NV 88901-6006  
Loan # xxxxxxx5595

5. As of the date Debtors' Chapter 13 Petition was filed no equity existed in said property above the amount of the appraisal value of \$ 41,605.00 thereby leaving the junior loan to CitiMortgage, Inc as wholly unsecured and the first loan to America's Servicing, Co as partially secured to the extent of the value of the property. If said property were foreclosed or otherwise sold at auction on the date of the petition, there would be insufficient proceeds to pay anything to CitiMortgage, Inc on the junior loan and only partial payment to America's Servicing, Co on the first loan.

6. Debtors declare that the entire junior claim of CitiMortgage, Inc is unsecured and the first claim of America's Servicing, Co is only partially secured such that all such unsecured debt should be reclassified as unsecured to share pro rata with other general unsecured creditors through the debtors' Chapter 13 plan with any proof(s) of claim filed by it modified accordingly to document the claim as unsecured, and that the junior lien filed by CitiMortgage, Inc, as identified above encumbering subject property be properly avoided by Order of this Court and the lien of America's Servicing, Co on the first loan be modified accordingly by order of the Court.

1

## **LEGAL ARGUMENT**

**A. The Restrictions of 11 U.S.C. § 1322(b)(2) Do Not Apply to Real Property Which is Not Debtor's Principal Residence.**

11 U.S.C. §1322(b)(2) does not apply to this property as it is not Debtors' principal residence. That section provides:

(b) Subject to subsections (a) and (c) of this section, the plan may—

\* \* \* \*

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest that is secured by an interest in real property that is the debtor's principal residence, .....

**B. The Claims by Lienholders May be Bifurcated into Secured and Unsecured Claims Pursuant to 11 U.S.C. §506(a).**

11 U.S.C. § 506(a)(1) provides in pertinent part:

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim.

In re Zimmer, 313 F.3d 1220, 1221 (9th Cir.2002), accepted what was the majority view in the various circuits, that a, wholly unsecured lienholder is not entitled to the protection of 11 U.S.C. §1322(b)(2). The Court stated that a wholly unsecured lienholder's claim can be modified and reclassified as a general unsecured claim pursuant to 11 U.S.C. §506(a).

**C. Any Proof of Claim Filed by Named Lienholders Should be Conformed by Order of This Court to any Modification of Their Rights Determined by This Court.**

11 U.S.C. §502 provides that a claim of interest represented by proper Proof of Claim filed pursuant to section 501 is deemed allowed unless objected to. Debtors herewith objects to any and all Proof(s) of Claim which may have been filed by CitiMortgage, Inc or America's Servicing, Co, relative to their loans and request that any Proof(s) of Claim of same representing such claims be modified accordingly to unsecured claims consistent with the Order of this Court determining their claims to be

1 wholly unsecured in the case of the junior lien and only partially secured in the case of  
2 the first lien.

3 III.

4 CONCLUSION

5 Debtors respectfully request determination of value of Debtors' non-principal  
6 residence real property to be less than the amount of the first lien and argue that since  
7 the junior claim is wholly unsecured, it may be completely avoided and "stripped off"  
8 pursuant to 11 U.S.C. §506(a) and that the first claim of America's Servicing, Co may  
9 be modified, stripped down and reduced to the actual value of the property; that the said  
10 claims be reclassified as general unsecured claims to be paid pro rata with other general  
11 unsecured creditors through the debtors' Chapter 13 plan; that any Proof of Claim of the  
12 lienholders be modified consistent with the actual value of the property.

13 WHEREFORE, Debtors pray that this Court:

14 1. Determine the value of Debtors' non-principal residence to be \$41,605.00  
15 or such other amount as the evidence may justify as of the date of the Petition; and

16 2. Avoid and extinguish the junior lien of CitiMortgage, Inc, as wholly  
17 unsecured lien pursuant to 11 U.S.C. Section 506(a) upon completion of the Debtor's  
18 Chapter 13 plan; and

19 3. Modify the first lien of America's Servicing, Co as secured only to the  
20 extent of the actual value of the property as of the date of the Petition to be paid through  
21 the Chapter 13 Plan; and

22 4. Reclassify the second claim of CitiMortgage, Inc, and the non-secured  
23 portion of America's Servicing, Co's claim as a general unsecured claims to be paid pro  
24 rata with other general unsecured creditors through the Debtors' Chapter 13 plan; and

25 5. Conform any Proof(s) of Claim filed by the claim of America's Servicing,  
26 Co to the secured/unsecured status of said claims as determined by this Court; and

27 ///

28 ///

6. Order such other relief as the Court may deem appropriate.

Dated this 10 day of January, 2010.

Respectfully Submitted:

CROSBY & ASSOCIATES

~~David M. Crosby, Esq.  
Attorney for Debtors~~

20020114  
.00737Affix R. P. T. T. \$215.00  
Parcel Number: 140 18 310 010**GRANT, BARGAIN, SALE DEED**

THIS INDENTURE WITNESSETH: That

2/11/06-T

FORTUNE HOLDING GROUP, A Nevada Corporation  
FOR A VALUABLE CONSIDERATION, the receipt of which is hereby  
acknowledged, do hereby Grant, Bargain, Sell and Convey to:  
OSCAR A. ORELLANA, A married man as his sole and separate propertyall that real property situated in the County of Clark, State of Nevada, bounded and  
described as follows:Lot Twenty (20) in Block Five (5) of HOLIDAY PARK NO. 10 as shown by map  
thereof on file in Book 15 of Plats, page 52, in the Office of the County Recorder of  
Clark County, Nevada.

- SUBJECT TO:**
1. Taxes for the fiscal year 2001 and 2002
  2. Covenants, conditions, reservations, rights, rights of way,  
easements, not of record.

Together with all and singular the tenements, hereditaments and appurtenances  
thereunto belonging or in anywise appertaining.

FORTUNE HOLDING GROUP

Sharon Wilson, PRESIDENT

STATE OF NEVADA )

ss.

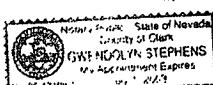
COUNTY OF CLARK)

On January 9, 2002  
personally appeared before me, a Notary  
Public (or judge or other authorized person,  
as the case may be):Sharon Wilson  
personally known (or proved) to me to be the  
person whose name is subscribed to the above  
instrument who acknowledged that she  
executed the instrument.

Send Tax Statements To

ESCROW NO.44461 GS  
STERLING ESCROW  
WHEN RECORDED MAIL  
Mr. Oscar A. Orellana  
2735 San Vincente Street  
Las Vegas, NV 89115Sharon Wilson  
Signature

(NOTARIAL SEAL)



CLARK COUNTY, NEVADA  
JUDITH A. VANDEVER, RECORDER  
RECORDED AT REQUEST OF  
NOTARY PUBLIC COMPANY  
01 14 2002 00172 REC  
BOOK 14000-0114 INST 00737  
FEE 14.00 DPTT 14.00

**EXHIBIT**



Street Address

Home Values

Local Info

Find a Pro

## 2735 San Vincente St Las Vegas, NV 89115

[Home Details](#) | [Recently Sold Homes](#) | [Similar Homes for Sale](#) | [Home Values](#) | [Schools](#)



### Estimated Home Values:

**eppraisal \$41,605**

Low \$35,364 - High \$47,845

**Zillow.com \$117,500**

**cyberhomes \$106,742**

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### Home Details

#### Public Record

#### User Edits (Login or Register to edit.)

Bedrooms:	2	Bedrooms:	N/A
Bathrooms:	2.00	Bathrooms:	N/A
Square Footage:	837	Square Footage:	N/A
Year Built:	1980	Year Built:	N/A

La  
Kn  
Ca  
Se  
ww

V V

Home Details

Con  
Rea

**EXHIBIT**

AMER  
1080 I  
Las Vi

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Find your home's current market value online with [HouseValues.com](http://HouseValues.com).  
[www.HouseValues.com](http://www.HouseValues.com)



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(702) 1

Visit 1

[Recently Sold Homes](#)[Similar Homes for Sale](#)**Recently Sold Homes**

Address	Sales Price	Sale Date	Bed/Bath	Sq. Ft.	Nea
2715 Ventura Way North Las Vegas, NV 89030	\$36,500	4/8/2009	2/1	768	Curre
2724 Ventura Way North Las Vegas, NV 89030	\$32,000	4/20/2009	2/1	768	•
2725 Soledad Way North Las Vegas, NV 89030	\$25,000	4/6/2009	2/1	768	•
3709 Reseda Cir North Las Vegas, NV 89030	\$40,000	5/18/2009	3/1	864	•
3717 Reseda Cir North Las Vegas, NV 89030	\$49,900	11/17/2008	2/1	768	•

FIN  
S

www.financial.com

891

3751



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2469

- Local
- State
- National





Return Mail Only  
PO Box 10388  
Des Moines, IA 50306-0388

## Monthly Mortgage Statement

Statement Date 08/27/08  
Loan Number 1127138696

## Customer Service

Online  
[www.mortgageaccountonline.com](http://www.mortgageaccountonline.com)

Telephone 800-842-7654 Hours of Operation  
Mon - Fri, 8 AM - 6 PM.  
in your time zone

Fax 866-453-6315

Payments PO Box 60768 Correspondence  
PO Box 10328  
Los Angeles CA 90060 Des Moines IA 50306

000092 1 AT 0.346 0092-000092 000183 001 01 ACN04P 0092  
OSCAR A ORELLANA  
1483 MINER WAY  
LAS VEGAS NV 89104-5405

## Important Messages

## Summary

Payment (Principal and/or Interest, Escrow)	\$1,139.96	Property Address	2735 SAN VINCENTE ST LAS VEGAS NV 89115
Optional Product(s)	\$0.00	Unpaid Principal Balance	\$167,997.54 (Contact Customer Service for your payoff balance)
<b>Current Monthly Payment 10/01/08</b>	<b>\$1,139.96</b>	Interest Rate	7.375%
Overdue Payments	\$0.00	Interest Paid Year-to-Date	\$8,259.84
Unpaid Late Charge(s)	\$0.00	Taxes Paid Year-to-Date	\$416.32
Other Charges	\$0.00	Escrow Balance	\$114.09
<b>TOTAL PAYMENT DUE 10/01/08</b>	<b>\$1,139.96</b>		

## Activity Since Your Last Statement

Date	Description	Total	Principal	Interest	Escrow	Late Charge	Other
08/27	PAYMENT	\$1,139.96		\$1,032.48	\$107.48		

000092/000183 ACN04P 0092 CTM1C001 1

Please detach and return with your payment

Loan Number	1127138696
Total Payment Due 10/01/08	\$1,139.96
After 10/16/08 Add Late Fee	\$51.62
Total Amount Due After 10/16/08	\$1,191.58

Check here and see  
reverse for address  
correction.

OSCAR A ORELLANA

0092-000092/000183 001 01 ACN04P 106 012

000092/000183 001 01 ACN04P 106 012

AMERICA'S SERVICING CO.  
PO BOX 60768  
LOS ANGELES CA 90060-0768

EXHIBIT 3



**Account Information**

Statement Date: 09/01/08

Page 1 of 2

Property Address: 2735 SAN VINCENTE ST  
LAS VEGAS NV 89115-0000

ACCOUNT NUMBER: 0770990559-5

Type of Mortgage	FRHEL W/15 YR BLN
Principal Balance	\$41,451.95
Interest Rate	10.25000%
Interest Year to Date	\$2,839.22

**Account Activity**

	PAYMENTS RECEIVED	CURRENT PAYMENT DUE
Date	08/26/08	10/01/08
Principal	\$22.10	\$22.29
Interest	\$354.26	\$354.07
Total Amount	\$376.36	\$376.36

For routine questions regarding the servicing of your mortgage loan, please call our Customer Service department at 1-800-283-7918.

If you have a complaint or concern that you have been subjected to unfair lending practices in relation to a mortgage loan or other financial product or service that you obtained through our company or a third party, please call our Fair Lending Hotline at 1-866-309-1054.

Account Number: 0770990559-5

**OSCAR A ORELLANA**

Please designate how you want us to apply any additional funds. Undesignated funds first pay outstanding late charges and fees, then principal. Once paid, additional funds cannot be returned.

Please check box to indicate mailing address/phone number changes and enter on reverse side.

Include account number on check and make payable to:

CITIMORTGAGE, INC.

PO BOX 6006

THE LAKES NV 88901-6006

**citimortgage****MORTGAGE ACCOUNT STATEMENT**

Take command of your mortgage - Visit Today!

[www.citimortgage.com](http://www.citimortgage.com)

Customer service 1-800-283-7918\*

\*Calls are randomly monitored and recorded to ensure quality service.

Would you like an easier way to make your mortgage payment?

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SIS0071D-264302452008AH04-09/01/08-137-009509-1

OSCAR A ORELLANA  
1483 MINER WAY  
LAS VEGAS NV 89104-5405

005690  
005690

E-Z PAY

**Monthly Highlights**

To continue to provide you with excellent service, CitiMortgage has extended our Customer Service hours. Please feel free to contact us about your mortgage during our new extended hours: Monday through Friday from 7:00 a.m. to 12:00 Midnight Eastern Time, Saturday from 8:00 a.m. to 7:00 p.m. Eastern Time, and Sunday from 12:00 Noon to 11:00 p.m. Eastern Time.

Apply for the Citi Cash Returns Card.

Most ways to earn, easiest to redeem -  
It's Automatic! Visit [www.cardsoffer.citicards.com](http://www.cardsoffer.citicards.com)  
And enter offer code RB2.

CRA SS REG-0798

	Due Date:	Total Amount Due:
See detail below	10/01/08	\$376.36
Additional Principal:	\$	
Additional Escrow:	\$	
If payment received after: 10/16/08	\$	
Add late charge of: \$18.81	\$	
Additional Monthly Payment:	\$	
Total Amount Enclosed	\$	

Please do not send cash. Please allow 7 to 10 days for postal delivery.  
To ensure timely processing of your mortgage payment, please use the enclosed envelope and coupon. Do not include account information with your payment.

00709905595 0000037636 0000039517 000003733

**EXHIBIT****EXHIBIT**